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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,012	11/14/2003	Yoichi Sato	03560.003393.	7802
5514 7590 06/19/2009 FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112				
EXAMINER				
DURNFORD GESZVAIN, DELOON				
ART UNIT		PAPER NUMBER		
2622				
MAIL DATE		DELIVERY MODE		
06/19/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/712,012

Applicant(s)

SATO, YOICHI

Examiner

Dillon Durnford-Geszvain

Art Unit

2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Claims **11-13** are pending, claims **11-13** are amended, and claims **1-10** are cancelled.

Response to Arguments

2. Applicant's arguments with respect to claims **11-13** have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim **13** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites the limitation that the dark capture operations are performed in ascending order of the image taking operations. This is vague and indefinite because image capture operations could have more than one order. They could be ordered in time, by exposure time, by size, etc. The Examiner will interpret the claim to be that the dark capture operations are performed in the same sequence as the image capture operations and therefore the claim would be essentially identical to claim **12**.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims **11-13** are rejected under 35 U.S.C. 102(e) as being anticipated by US 7,339,620 (Yamagishi)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

7. As to claim **11**, Yamagishi teaches an imaging apparatus (Fig. 1) comprising:
a photoelectric conversion area 14 including a plurality of photoelectric converters (C3 L15-20);

a controller 50 configured to perform a plurality of image-taking operations at a plurality of different charge accumulation times, respectively, in a state where the photoelectric conversion are is not shielded by a shutter 12 (Image sensing operations in Fig. 9 in continuous shot mode after SW2 is depressed), and perform a plurality of

dark capture operations at the plurality of different charge accumulation times, respectively, in a state where the photoelectric conversion area 14 is shielded by the shutter 12 (the dark capture operations performed after switch SW2 is depressed in Fig. 9 in continuous mode, C16 L6-10 and C11 L18-25) after completion of performing the plurality of image taking operations (note the Examiner interprets the limitation of performing the plurality of dark capture operations after completion of performing the plurality of image taking operations to read that the dark capture operations are performed after each image capture operation as opposed to being performed before the image capture operations, this interpretation corresponds to Fig. 15 of the instant application),

an image processor 20 configured to correct a plurality of image data which is acquired in the plurality of image taking operations with a plurality of correction data which is acquired in the plurality of dark capture operations (Step S136, C13 L56 to C14 L3),

wherein the plurality of different charge accumulation times of the dark capture operations are equal to that of the image taking operations (C11 L18-25).

8. As to claim 12, see the rejection of claim 11 and note that Yamagishi further teaches the imaging apparatus of claim 11, wherein at least two of the accumulation times for generating the correction data in the dark capture operations are different (C16 L50-61), and the dark capture operations are performed in the same order as the image

taking operations (Fig. 9).

9. As to claim **13**, see the rejection of claim **11** and note that under the Examiner's interpretation under the rejection of claim **13** under 112 2nd paragraph claim **13** is similar to claim **12** and is rejected on similar grounds. However, even if the claim limitation were interpreted to mean that the dark accumulation times are performed in ascending order as to amount of accumulation time, Yamagishi teaches that the dark current is redone if the accumulation time T_n is longer than the accumulation time T_{n-1} and therefore the dark captures are performed in ascending exposure time order (C11 L14-24).

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dillon Durnford-Geszvain whose telephone number is (571)272-2829. The examiner can normally be reached on Monday through Friday 8 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Ometz can be reached on (571) 272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David L. Ometz/
Supervisory Patent Examiner, Art Unit 2622

/DDG/

6/7/2009